HIGH COURT OF UTTARAKHAND AT NAINITAL

(Court's order whether the case is nor not approved for reporting.)

(Chapter VIII

Rule 32(2) (b)

Description of the

Case

Civil Revision No. 59/02

Smt. Sarasati Bhandari

Vs.

State of Uttaranchal and others

(Approved for Reporting)

~~Not approved for reporting~~

Date of decision
25.11.2004

Initials of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

CIVIL REVISION NO. 59 OF 2002

Smt. Saraswati Bhandari, W/o Sri Sultan Singh Bhandari, R/o Village Balbhadrapur, Kotdwar, Distt. Pauri Garhwal.

.....Revisionist.

Versus

1. State of Uttaranchal, through Collector, Pauri Garhwal.
2. Bharat Electronics Ltd., Kotdwar, Distt. Pauri Garhwal, through General Manager.

.....Respondents.

25.11.2004

Hon'ble Rajesh Tandon, J.

By the present revision, the revisionist has prayed for setting aside the order dated 17.05.2002 passed by the Executing Court refusing to grant amendment.

Briefly stated, in proceedings under the Land Acquisition Act award was made on 28.10.1987, thereafter, on a reference under Section 18 of the Land Acquisition Act, the District Judge has enhanced the compensation to the following effect on 10.08.1990:-

The following order was passed in the aforesaid reference:-

"*The award under this reference is ordered to be modified and the amounts of compensation are enhanced and the petitioner is entitled to the difference of amounts i.e. the enhanced additional compensation, additional solatium, additional interest etc. only on the difference calculated from*

the enhanced amount in the following manner and the reference is decided accordingly:-

(i) The petitioner is entitled to get enhanced compensation of Rs. 24,375/- per Bigha (interest of Rs. 12,000/- per Bigha determined by the Land Acquisition Officer).

(ii) Besides that the petitioner is further entitled to additional solatium only on the excess amount of compensation granted by this Court @ Rs. 30% (thirty per cent) as provided in section 23(2) of the Land Acquisition Act, in consideration of the compulsory nature of acquisition.

(iii) In addition the petitioner shall further get additional amount of compensation the difference of the amount thus increased by this Court), calculated @ Rs. 12% (rupees twelve per cent) per annum, from 17.03.1986 (i.e. from the date of notification under Section 4 of the U.P. Land Acquisition Act), till 29.5.1986 (i.e. the date of taking possession) as provided under section 23 (1-A) of the Land Acquisition Act.

(IV) In addition the petitioner shall further get additional interest @ 9% (nine percent) per annum from 30.05.1986 to 29.05.1987, on the total of aforesaid three items i.e. on the difference calculated from the excess amount so awarded by this court and @ Rs. 15% per annum from 30.05.1987 till the date of its deposit by Collector Pauri in court.

The award be prepared and payments be made to petitioner immediately according to aforesaid modified terms, conditions and orders in this reference."

In the execution application following averments have been made by the petitioner:-

"यह कि उपरोक्त प्रतिकर, ब्याज आदि मध्द प्रार्थीनी द्वारा दिनांक ५.२.८८ को माननीय न्यायालय से १८,३0,१८२,६0 रूपये की राशि अन्डर प्रोटेन्ट प्राप्त की गयी तथा माननीय न्यायालय द्वारा उपरोक्त रिफरेंस में पारित निर्णय दिनांक १0.८. ६0 के बाद प्रतिकर, ब्याज आदि की मद में दिनांक 2.१२.६१ को १६, ८७,६0३. ६७ रूपये + ५,0४,५५0,२५ रूपये कुल २४,६२,४५३.६२ रूपय` की राशि प्राप्त की गयी। इस प्रकार दिनांक 2.१२.६१ तक उपरोक्त कुल प्रतिकर २४,३७,५00/– रूपये + सोलेशियम + अतिरिक्त प्रतिकर + ब्याज आदि की मद में दिनांक ५.२.८८ तक ३८,४0,६३४.६0 रूपये की राशि प्राप्त करने के बाद दिनांक २.१२.६१ को ३१,६0,५४0.६0 रूपये की राशियां बकाया होती थी।"

In reply to the execution application following statement has been given by the State:-

"(7) कि न्यायालय उद्घोषणा से अवार्ड की राशि रू0 १२,000/– प्रति बीघा की एवज में रू0 २४,३७५/– उद्घोषित की गई है और इसी पर अन्य देयकों में बढ़ोत्तरी हुई, जो निम्न हैः–

(अ) भूमि का प्रतिकर	रू0 २४,३७,५00/–(१६ एकड़ के लिए)
(ब) ३0% सोलेशियम	रू0 ७,३१,२५0/–
(स) १४% अतिरिक्त	रू0 ३१,२५३ = ४२
	योग/–३२,00,00३= ४२.
(द) ६%	रू0 २,८८,000 = ३१
(३0.५.८६ से २६.५. ८७ तक)	
(य)१५% ब्याज (३0.५.८७ से ५.२.८८ तक)	रू0 ३,३0,८८२=५४
	.....
	कुल योग रू0 ३८,१८,0८६=२७

का डिक्रीदार को भुगतान इस प्रकार किया गया।

(अ) जिला न्यायालय के माध्यम से दिनांक ५.२.८८ को	रू0 १८,३0,१८२ =६0

(ब) रेफरेन्स उद्घोषित दिनांक १०.८.९0 को किये जाने से पनरीक्षित धनराशि का अन्तर — रू0 १९, ८७,९0३ = ६७

योगः— **रू0 ३८,१८,0८६=२७**

(9) कि डिक्रीदार का कथन कि भुगतान की गई राशि रू0 ३८,१८,0८६=२७ के अतिरिक्त भी रू0 ३१,६0,५४0=६0 की राशि बकाया मदयून की ओर है, गलत है और उपरोक्त विवेचन से इजराय मतालवा पेश्तर पूर्ण भुगतान किये जाने से इजराय खारिज किये जाने योग्य है।''

During the execution proceedings, the revisionist has prayed for amendment to the following effect:-

"अतः प्रार्थना है कि न्यायहित में इजराय दर्खास्त में निम्नलिखित संशोधन करने की इजाजत प्रदान करने की कृपा की जाय––

(I) यह कि इजराय दर्खास्त में पेज संख्या 2 के पैरा संख्या 4 की चौथी लाइन से ५,0४,५५0,२५/– रूपये कुल २४,६२,४५३.६२/– रूपये को व इसी पैरे की छठी लाइन में दिनांक २–१२–९१ तक को काटने की इजाजत प्रदान करने की कृपा की जाय तथा इसी पैरे में छठी लाइन में ही 'कुल प्रतिकर' के बीच ''१६ (सोलह) एकड़ भूमि के'' को लिखने की इजाजत प्रदान करने की कृपा की जाय।

(II) यह कि इजराय दर्खास्त के पेज संख्या 2 के पैरा संख्या ४ की सातवी लाइन में ''३८,४0,६३४.६0'' को काटकर उसके स्थान पर ''व'' को काटकर ''तथा'' लिखने की व इसी पैरे की आखिरी लाइन में ''३१,६0,५४0.६0'' को काटकर उसके स्थान पर ''ब्याज सहित ३१,६६,८0२'' लिखने की इजाजत प्रदान करने की कृपा की जाय।

(III) यह कि इजराय प्रार्थनापत्र के पेज संख्या ३ के पैरा संख्या ५ में लिखे गये '' १,६८,७५0'' के पहले अंक ''३'' लिखने की इजाजत प्रदान करने की कृपा की जायं।

(IV) यह कि इजराय प्रार्थनापत्र के पेज संख्या ४ के पैरा संख्या ७ व ८ में क्रमशः ''+५,0४,५५0,२५/– रूपये कुल २४,६२,४५३.६२'' को व ''५,0४,५५0,२५/– रूपये कुल २४,६२,४५३.६२/– रूपये'' को काटने की इजाजत प्रदान करने की कृपा की जाय।

(V) यह कि इजराय दर्खास्त के पेज संख्या ४ के पैरा संख्या ८ व ९ में दो जगह लिखी संख्या ''६,७४,३४७/–'' को काटकर दोनों जगह '' ११,७८,८६८.४0/– रूपये'' लिखने की इजाजत प्रदान करने की कृपा की जाय तथा पैरा संख्या ९ में ही संख्या ''८,२५,८४४/– रूपये'' व ''१५,00१६१/–'' को काटकर क्रमशः '' १४,४३,७४६.७0'' व ''२६,२२,६४५.90'' लिखने की इजाजत प्रदान करने की कृपा की जाय व पैरा संख्या ९ के बाद वाले पैरे में क्रमशः ''१५,00१६१/– (पन्द्रह लाख एक सौ इक्यानवे रूपये दस पैसे)" लिखने की व संख्या ''६,७४,३४७/–'' को काटकर ''११,७८, ८६८.४0'' लिखने की व संख्या ''२७७/– रूपये'' को काटकर उसकी जगह ''४८४,४७/– रूपये'' लिखने की इजाजत प्रदान करने की कृपा की जाय।

(VI) यह कि इजराय प्रार्थनापत्र के पेज संख्या 4 के प्रार्थना वाले पैरे की दूसरी लाइन में ''''१५,00१६१/– (पन्द्रह लाख एक सौ इक्यानवे रूपये)" को काटकर उसके स्थान पर ''२६,२२,६४५.90/– रूपये (छब्बीस लाख बाइस सौ हजार छः सौ पैंतालिंस रूपये दस पैसे)" लिखने की इजाजत प्रदान करने की कृपा की जाय।''

In the Counter Affidavit filed in reply to the amendment application, the respondent no.2 in paragraph 14, 15, 15 and 17 has alleged as under:-

"14. That it is apparent from the application of the revisionist that revisionist has projected the huge claim on the following basis as per the Chart below:

Cost (Claimed)	*100*24375 = Rs. 24,37,500*
30% Solatium (claimed on total cost on difference between the amount determined by district Judge and the amount initially disbursed by SLAO)	*Rs. 7,31,250*
Total	*Rs. 31,68,750*
12% interest form 31.386 to 29.5.86 (claimed on total cost	*3168750*12/100/59/365=Rs. 61465*
not on difference between the amount determined by district Judge and the amount initially disbursed by SALO)	
9% interest from 30.5.86 to	*3168750*9/100*365/365=Rs. 285187*

29.5.87 (claimed on total cost not on difference between the amount determined by district Judge and the amount initially disbursed by SLAO)	
15% interest on Rs. 3168750+Rs. 61435 from 30.05.87 to 5.2.88 date of receipt of 1st instalment (Claimed on total cost not on difference between the amount deterimed by district Judge and the amount initially disbursed by SLAO and on interest also for the period from 31.3.86 to 29.5.86)	*3230215*15/248/365=Rs. 329216*
Total as on 5.0.88	*Rs. 3844618*
Balance amount after receipt Rs. 1830182.6 on 5.5.88	*Rs. 2014435.40*
15% interest from 6.2.88 to 2.12.91	*2014435.40*15/100* 1392/365 = Rs.1152367.42*
Total payment due on 02.12.1991	*Rs. 3166802.82*
Payment received by her on 02.12.91 (as admitted in paragraph no.4 of the execution	*Rs. 1987903.67+504550.25+ Rs. 2492453.92*

application)	
Balance Payment	*Rs. 674348.90*
15% interest on balance	*Rs. 825846.47*

payment from 03.12.91 to 03.02.2000	
Amount under demand	*Rs. 1500195.37 (Rs. 1500191.00)*

15. That the objection of the State Government also appears to have given a mis-interpretation of the relief of the Award dated 20.09.1990 of the District Judge and thus the Objections of the State Government are also misdirected. A copy of the objections of the State Government has been filed and annexed as Annexure-2 of the affidavit of the Revisionist.

16. That in paragraph no. 4 of the application for execution, the revisionist herself has admitted to have received an amount of Rs. 5,04,550.25 from the State Government. It is stated that the State Government has also not denied such payment in its objections.

17. That the Revisionist moved an amendment application in the original execution application and sought to withdraw the admission of withdrawal of an amount of Rs. 5,04,550.25 from the State Government and all the order calculations are consequential of withdrawal of such admission of the Revisionist.

18. That the learned District Judge has correctly and legally addressed the issue and while recording that the amendment being in the nature of withdrawal of an admission by the revisionist, in the impugned order dated 17.5.2002 has correctly rejected the application of the revisionist."

Counsel for the respondent has submitted that the admission cannot be withdrawn by way of amendment. It has been held in 1998 A.I.R. SC Page 1, in which the Judgment of Apex Court in the case of ***M/s Modi Spinning and Weaving Mills Co. Ltd. v. M/s Ladha Ram & Company, AIR 1977 SC 680*** has been followed.

Relying upon the judgment of ***M/s Modi Spinning and Weaving Mills Co. Ltd and another Vs. Ladha Ram & Co, 1977(1) SCR 728.*** It has been held as under:-

> *"In that case Ray, C.J,. speaking for the Bench had to consider the question whether the defendant can be allowed to amend his written statement by taking an inconsistent plea as compared to the earlier plea which contained an admission in favour of the plaintiff. It was held that such an inconsistent plea which would displace the plaintiff completely from the admissions made by the defendants in the written statement cannot be allowed. If such amendments are allowed in the written statement cannot be allowed. If such amendments are allowed in the written statement plaintiff will be irretrievable prejudiced by being denied the opportunity extracting the admission from the defendants."*

In ***Jagdish Singh v. Nathhu Singh, AIR 1992 SC 1604,*** the Hon'ble Supreme Court held that the Court may allow to certain extent even the conversation of the nature of the suit, provided it does not give rise to entirely a new cause of action. An amendment sought in a plaint filed for specific performance may be allowed to be done without abandoning the said relief but amendment seeking for damages for breach of contract may be permitted.

Relying upon the judgment of in the case of ***Smt. Ganga Bai v. Vijay Kumar, AIR 1974 SC 1126; M/s Ganesh Tradng Co. v. Maoji Ram, AIR 1978 SC 484; Estrella***

Rubber v. Dass Estate Pvt. Ltd., (2001) 8 SCC 97; Siddalingamma and Anr. V. Mamdha Shenoy, (2001) 8 SCC 561: 2002 SCFBRC 17; Jayanti Roy v. Dass Estate Pvt. Ltd., AIR 2002 SC 2394; 2002 SCFBRC 533; Sampat Kumar v. Ayyakannu & Ar., (2002) 7 SCC 559; Nagappa v. Gurudayal Singh v. Ors., (2003) 2 SCC 274; Hanuwant Singh Rawat v. M/s Rajputana Automobiles, Ajmer (1993) 1 WLC 625; M/s Modi Spinning and Weaving Mills Co. Ltd. *(supra);* ***Heeralal v. Kalyanmal & Ors., (1998) 1 SCC 278,*** *the Division Bench of the Allahabad High Court has held that the amendment is not permissible if the very basic structure of the plaint if changed or the amendment itself is not bona fide and in case the facts were in the knowledge of the party at the time of presenting the pleadings, unless satisfactory explanation is furnished for not introducing those pleadings at the initial stage, the amendment should not be allowed. It was also submitted that the amendment should also not be permitted where it withdraws the admission of the party or the amendment sought is not necessary to determine the real controversy involved in the case."*

It is settled law that the executing Court cannot be behind the decree. In the case of ***Food Corporation of India v. S.N. Nagarkar reported in AIR SCW 2002(1) page 466,*** it has been held as under:-

"The execution application giving rise to the instant appeal was filed for implementing the order dated 6th May, 1994 and in such proceeding, it was not open to the appellant either to content that the judgment and order dated 6th May, 1994 was erroneous or that it required modification. The

judgment and order aforesaid having attained finality, has to be implemented without questioning its correctness."

The award having been modified by the reference court, it will be open to the executing court to pay the compensation in accordance with the order of reference dated 10.08.1990.

It is also settled that only by way of amendment no relief is conferred or taken to have been granted. The court has to adjudicate on the basis of the decree passed and to execute the same in accordance with the terms of the decree or award.

In the present case, since the award is already on the record, by way of amendment no benefit can be granted in excess of the award.

The executing court is directed to ascertain the exact amount for which the Decree holder is entitled. In the present case, the executing court has rejected the amendment without verifying the true nature of the amount claimed by the Decree holder and the amount awarded under the reference.

While disposing of the execution application, the executing court is directed to give effect to the award passed in reference and if it has brought to the notice of the executing court that the Decree holder has not properly given the figure in his execution application, he may direct the Decree holder to amend accordingly.

It is well established that the technicalities of law should not come in the dispensation of justice. The Apex Court has held in ***(2001) 8 SCC 151, M.S. Grewal vs. Deep Chand Sood*** as under:

> *"Law Courts will lose their efficacy if they cannot possibly respond to the need of the society-technicalities there might be many but the justice-oriented approach ought not to be thwarted on the basis of such technically*

since technicality cannot and ought not to outweigh the course of justice."

Consequently, in view of the above, the Revision is dismissed at this stage. No as to costs.

25.11.2004 (RAJESH TANDON, J.)

P.S.R.